

DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

ORIGINAL

RECEIVED

MAY 22 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Parker, Arizona)

)
)
)
)

MM Docket No. 01-69
RM - 10081

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS

McMullen Valley Broadcasting Company ("Petitioner"), by its counsel, hereby replies to the "Comments and Counterproposal" submitted by Farmworker Educational Radio Network, Inc. ("Farmworker") in this proceeding. As will be discussed, a portion of the Farmworker counterproposal is defective and should be dismissed. In support hereof, Petitioner states as follows:

1. Farmworker proposes to modify its permit on Channel 230C3 to specify Channel 248B1 at Parker, Arizona and modify its permit accordingly.¹ According to the Counterproposal, this change at Parker will allow Station KFLG-FM, Kingman, Arizona to change its community of license to Searchlight, Nevada and to downgrade its class of channel from Channel 234C to Channel

1. Farmworker seeks a nonadjacent channel change from Class C3 to Class B1. It is petitioner's position that a Class B1 facility which is protected to its 57 dBu whereas the Class C3 is protected to its 60 dBu should be considered a higher class channel. As such the upgrade should be subjected to other expressions of interest by Public Notice. See 1.420(g) of the Commission's Rules and Modification of FM Broadcast Licensees to Higher Class Co-Channel or Adjacent Channels, 51 FR 20290 (1986). Petitioner hereby expresses an interest in applying for Channel 248B1 rather than Channel 247C3 at Parker.

234C0 provided certain channel or site changes are made at Caliente, Boulder City, and Henderson, Nevada and Baker, California.

2. Farmworker's counsel states that it "understands that the licensee of Station KSTJ(FM), (Boulder City, Nevada) will submit an application proposing relocation of its transmitter...." (at p. 3). Further, counsel states the licensees of Stations KSTJ(FM) and KFLG-FM have consented to the proposed changes" (at p. 4). Finally, Farmworker's counsel states that "[a]ppropriate reimbursement of reasonable expenses incurred in connection with the resulting changes will be made" (at p. 4). In the copy of the Counterproposal served on undersigned counsel, no statements by the licensees were submitted. Nor does the pleading does not reference any statements.

3. The Commission needs to be assured that the licensees of the stations affected by this proposal will implement the changes and that reimbursement will be made by the benefitting party. Here, the licensee of Station KFLG-FM, Kingman, Arizona itself, has not indicated that it will file an application to relocate its transmitter site to serve Searchlight, Nevada and downgrade its class of channel. The Commission can not assume that the licensee will make such changes. Presumably, the licensee of KFLG-FM is the benefitting party, not Farmworker. It is KFLG who should affirmatively state that it will reimburse the licensees of KSTJ, Boulder City, Nevada, KMXB, Henderson, Nevada and KKBK, Baker, California for its changes. See e.g., Detroit, Howe and Jacksboro, Texas, Antlers and Hugo, Oklahoma, 13 FCC Rcd 15591 (1998).

4. It is well settled that the licensee of an affected station can not be made to change its transmitter site or community of license without consent. See Greenville, Texas, 6 FCC Rcd 6048 (1991). It appears that the Boulder City licensee has not submitted a consent statement for the change in site and the Kingman station has not submitted its consent to change its community of

license to Searchlight. Presumably, the Baker and Henderson permittee/licensee would be involuntarily changed under the policy set forth in Columbus, Nebraska. Presumably, Farmworker will not reimburse any of the affected stations.

5. Without any commitment from the licensee of KFLG, Kingman as to its willingness to make the proposed changes and to reimburse the affected stations, and a consent statement from the Boulder City station, the Commission can not accept this proposal. Counterproposals must be correct at the time of filing. See Detroit, Texas, et al. supra and cases cited therein. The only proposed change that is acceptable for consideration in this proceeding is the substitution of Channel 248B1 for Channel 230C3 at Parker. However, Farmworker fails to clearly state that it will apply to change its transmitter site for Channel 248B1 at Parker. The rest of the proposal is too defective and speculative for acceptance in this proceeding. Furthermore, the Kingman change is more properly considered as a contingent proposal which can not be implemented unless and until the Parker change is granted and implemented.

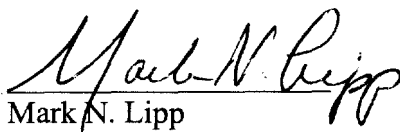
6. Farmworker suggests an alternate channel (239C3) for Parker so that it may have its permit modified to Channel 248B1. Should the Commission determine that Channel 248B1 is not an upgrade and not made available for other expressions of interest, then Petitioner will accept the allotment of Channel 239C3 and will apply for that channel.

7. The Counterproposal is also deficient from a technical standpoint. The Commission requires that proposals that involve a change in community of license include a gain/loss study and a showing of 5 aural services remaining in the loss area. See e.g., Modification of FM and TV Authorizations to Specify a New Community of License 4 FCC Rcd 4870 (1989); recons. granted in part, 5 FCC Rcd 7094 (1990), Atlantic and Glenwood, Iowa, 10 FCC Rcd 8074 (1995).

8. Accordingly, in view of the multiple material defects, the Farmworker counterproposal should not be accepted in this proceeding except for the allotment of Channel 248B1 to Parker as an additional channel (instead of Channel 247C3) or as a substitute for Channel 230C3.

Respectfully submitted,

MCMULLEN VALLEY BROADCASTING
COMPANY

By: 
Mark N. Lipp
Shook Hardy & Bacon LLP
600 14th Street, NW
Suite 800
Washington, DC 20005
(202) 783-8400

May 22, 2001

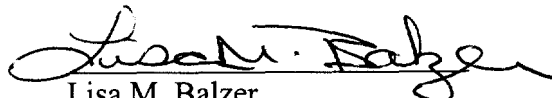
Its Counsel

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy & Bacon L.L.P., do hereby certify that on this 22nd day of May, 2001, I have mailed the foregoing Reply Comments to the following:

* R. Barthen Gorman
Federal Communications Commission
Mass Media Bureau
445 12th Street, SW
Room 3-A224
Washington, DC 20554

Anne Thomas Paxson, Esq.
Borsari & Paxson
2021 L Street, NW
Suite 402
Washington, DC 20036
(Counsel to Farmworker Educational Radio Network, Inc.)


Lisa M. Balzer

* Hand Delivered